



September 11, 2000

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2000-3466

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138966.

The City of Fort Worth (the "city") received a request for information relating to a specified fatality accident. You relate that you have released some of the requested information, but claim that a portion of requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108 (a)(2) of the Government Code excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. Unless information relating to a criminal investigation or prosecution *concluded* in a result other than a conviction or deferred adjudication, it may not be withheld under section 552.108(a)(2). You inform this office that the city "seeks to withhold the witness statements and witness lists so that it can complete its investigation without interference." We conclude from your statement that the investigation or prosecution of this matter has not reached a final conclusion. Therefore, no information can be withheld under section 552.108(a)(2) of the Government Code.¹

¹We generally presume that Government Code section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court designates information that may be withheld in pending cases). However, as you have not asserted this exception we have no basis for excepting the information from disclosure under this section of the Government Code.

The submitted documents include information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if the information relates to:
- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
 - (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold Texas driver's license numbers, VIN numbers, and Texas license plate numbers pursuant to section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

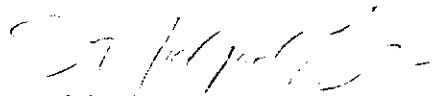
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138966

Encl. Submitted documents

cc: Mr. Alan Moore
Preston Commons West, Third Floor
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Dallas, Texas 75225
(w/o enclosures)